

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

**Proposing rule making related to waivers
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 69, “Renovation, Remodeling, and Repainting—Lead Hazard Notification Process,” Chapter 131, “Emergency Medical Services—Providers—Initial Certification—Renewal and Reactivation—Authority—Complaints and Investigations,” Chapter 132, “Emergency Medical Services—Service Program Authorization,” Chapter 134, “Trauma Care Facility Categorization and Verification,” Chapter 135, “Trauma Triage and Transfer Protocols,” Chapter 136, “Trauma Registry,” Chapter 139, “Emergency Medical Services—Training Programs—Students—Complaints and Investigations,” Chapter 144, “Emergency Medical Services—Air Medical Service Program Authorization,” Chapter 150, “Iowa Regionalized System of Perinatal Health Care,” and Chapter 173, “Contested Cases,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapters 17A, 135 and 147A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 135 and 147A and chapter 17A as amended by 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments are required pursuant to 2020 Iowa Acts, House File 2389. The amendments eliminate the term “variance” and replace it with the term “waiver” where appropriate in the Department’s administrative rules.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 8, 2020. Comments should be directed to:

Susan Dixon
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: susan.dixon@idph.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 641—69.15(135) as follows:

641—69.15(135) Waivers. Rules in this chapter are not subject to waiver ~~or variance~~ pursuant to 641—Chapter 178 or any other provision of law.

ITEM 2. Amend paragraph **131.5(2)“d”** as follows:

d. The department may grant a ~~variance~~ waiver for changes to the scope of practice that have not yet been adopted by reference in these rules pursuant to 641—Chapter 178.

ITEM 3. Amend subrule 131.7(1) as follows:

131.7(1) This rule is not subject to waiver ~~or variance~~ pursuant to 641—Chapter 178 or any other provision of law.

ITEM 4. Amend subrule 131.10(1) as follows:

131.10(1) This rule is not subject to waiver ~~or variance~~ pursuant to 641—Chapter 178 or any other provision of law.

ITEM 5. Amend rule 641—132.4(147A) as follows:

641—132.4(147A) ~~Variances~~ Waivers. If during a period of authorization, a service program is unable to maintain compliance with Iowa Code chapter 147A and these rules, the department may grant a ~~variance~~ waiver.

132.4(1) ~~Variances to~~ Waivers of these rules may be granted by the department to a currently authorized service program.

132.4(2) Requests for ~~variances~~ waivers shall apply only to the service program requesting the ~~variance~~ waiver and shall apply only to those requirements and standards for which the department is responsible.

132.4(3) A service program shall apply for a ~~variance~~ waiver in accordance with 641—Chapter 178.

ITEM 6. Amend subrule 132.5(16) as follows:

132.5(16) This rule is not subject to waiver ~~or variance~~ pursuant to 641—Chapter 178 or any other provision of law.

ITEM 7. Amend paragraph **134.2(7)“m”** as follows:

m. The director, pursuant to 641—Chapter 178, may grant a variance waiver from the requirements of rules adopted under this chapter for any trauma care facility.

ITEM 8. Amend paragraph **135.2(1)“d”** as follows:

d. The director, pursuant to rule, may grant a variance waiver from the requirements of rules adopted under this chapter for any hospital, emergency care facility, or service program provided that the variance waiver is related to undue hardships in complying with this chapter or the rules adopted pursuant to this chapter.

ITEM 9. Amend paragraph **136.2(6)“c”** as follows:

c. The director, pursuant to 641—Chapter 178, may grant a variance waiver from the requirements of rules adopted under this chapter for a trauma care facility that meets the requirements of this chapter.

ITEM 10. Amend rule **641—139.4(147A)**, catchwords, as follows:

641—139.4(147A) Training program standards, student requirements and variances waivers.

ITEM 11. Amend rule 641—139.7(147A) as follows:

641—139.7(147A) Temporary variances waivers. If during a period of authorization there is some occurrence that temporarily causes a training program to be in noncompliance with these rules, the department may grant a temporary variance waiver.

139.7(1) ~~Variances to~~ Waivers of these rules may be granted by the department to a currently authorized training program.

139.7(2) Requests for variances waivers shall apply only to the training program requesting the variance waiver and shall apply only to those requirements and standards for which the department is responsible.

139.7(3) A training program shall apply for a variance waiver in accordance with 641—Chapter 178.

ITEM 12. Amend subrule 139.9(1) as follows:

139.9(1) This rule is not subject to waiver ~~or variance~~ pursuant to 641—Chapter 178 or any other provision of law.

ITEM 13. Amend paragraph **144.3(4)“b”** as follows:

b. The service shall meet applicable requirements of these rules but may apply for a variance waiver using the criteria outlined in rule 641—144.7(147A).

ITEM 14. Amend subrule 144.4(10) as follows:

144.4(10) Implementation. The director may grant ~~exceptions and variances waivers~~ from the requirements of this chapter for any air medical service. ~~Exceptions or variations~~ Waivers shall be reasonably related to undue hardships which existing services experience in complying with this chapter. Services requesting ~~exceptions and variances waivers~~ shall be subject to other applicable rules adopted pursuant to Iowa Code chapter 147A. Nothing in this chapter shall be construed to require any service to provide a level of care beyond minimum basic care standards.

ITEM 15. Amend subrule 144.6(17) as follows:

144.6(17) This rule is not subject to waiver ~~or variance~~ pursuant to 641—Chapter 178 or any other provision of law.

ITEM 16. Amend rule 641—144.7(147A) as follows:

641—144.7(147A) Temporary variances waivers.

144.7(1) If during a period of authorization there is some occurrence that temporarily causes a service program to be in noncompliance with these rules, the department may grant a temporary variance waiver. Temporary variances waivers from these rules (not to exceed six months in length per any approved request) may be granted by the department to a currently authorized service program.

Requests for temporary ~~variances~~ waivers shall apply only to the service program requesting the ~~variance~~ temporary waiver and shall apply only to those requirements and standards for which the department is responsible.

144.7(2) To request a ~~variance~~ waiver, the service program shall:

a. Notify the department verbally (as soon as possible) of the need to request a temporary ~~variance~~ waiver. Submit to the department, within ten days after having given verbal notification to the department, a written explanation for the temporary ~~variance~~ waiver request. The address and telephone number are Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075; (515)725-0326.

b. Cite the rule from which the ~~variance~~ temporary waiver is requested.

c. State why compliance with the rule cannot be maintained.

d. Explain the alternative arrangements that have been or will be made regarding the ~~variance~~ temporary waiver request.

e. Estimate the period of time for which the ~~variance~~ temporary waiver will be needed.

144.7(3) Upon notification of a request for ~~variance~~ a temporary waiver, the department shall consider, but shall not be limited to the following:

a. Examining the rule from which the temporary ~~variance~~ waiver is requested to determine if the request is appropriate and reasonable.

b. Evaluating the alternative arrangements that have been or will be made regarding the ~~variance~~ temporary waiver request.

c. Examining the effect of the requested ~~variance~~ temporary waiver upon the level of care provided to the general populace served.

d. Requesting additional information if necessary.

144.7(4) Preliminary approval or denial shall be provided verbally within 24 hours. Final approval or denial shall be issued in writing within ten days after department receipt of the written explanation for the temporary ~~variance~~ waiver request and shall include the reason for approval or denial. If approval is granted, the effective date and the duration of the temporary ~~variance~~ waiver shall be clearly stated.

144.7(5) Any request for appeal concerning the denial of a request for temporary ~~variance~~ waiver shall be in accordance with the procedures outlined in rule 641—144.6(147A).

ITEM 17. Amend subrule 150.6(4) as follows:

150.6(4) *Level designation maintenance, ~~variance~~ waiver and confidential records.*

a. A hospital which is unable to maintain its designated level of care shall notify the department, in writing, within 60 days of the change in capacity to meet the designated level of care.

b. The director may grant a ~~variance~~ waiver from the requirements of rules adopted under this chapter for any hospital participating in the regionalized system of perinatal health care.

c. Proceedings, records, and reports developed pursuant to this chapter are confidential pursuant to Iowa Code section 135.11(27) and constitute peer review records under Iowa Code section 147.135, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the affected hospital, and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving verification of the participating hospital.

ITEM 18. Amend subrule 173.16(1) as follows:

173.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit ~~variances~~ waivers from this rule.